

FILED

08 APR 29 PM 4:31

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

9/1/08

BY:

DEPUTY

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Attorney for Defendant GENERAL INSURANCE COMPANY OF AMERICA
(erroneously sued as Safeco Surplus Lines Insurance Company)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'08 CV 782 JLS AJB

SAN DIEGO CENTER FOR CHILDREN,

) No.

Plaintiff,

) NOTICE OF REMOVAL TO UNITED
) STATES DISTRICT COURT

v.

)

SAFECO INSURANCE COMPANY,
SAFECO SURPLUS LINES INSURANCE
COMPANY, and DOES 1 through 5, inclusive,

)

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Defendants.

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TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF CALIFORNIA:

GENERAL INSURANCE COMPANY OF AMERICA ("General"), a Washington
Corporation sued erroneously as Safeco Surplus Lines Insurance Company, Defendant in the
above-entitled action, files this Notice Of Removal of this action from the Superior Court of the

ORIGINAL

1 State of California for the County of San Diego, in which it is now pending, to the United States
2 District Court for the Southern District of California.

3 1. This action was commenced in the Superior Court of the State of California for the
4 County of San Diego, Case No.37-2008-0000924-CU-IC-CTL, on April 1, 2008. A copy of all
5 process, pleadings and orders served on General is attached hereto as Exhibit "A".

6 2. This notice of removal is filed less than one year from the date of the
7 commencement of this action.

8 3. This action is one of a civil nature for Declaratory Relief.

9 4. The action is one in which the District Courts have original jurisdiction pursuant to
10 28 U.S.C. § 1332 and is one which may be removed to this Court by defendant pursuant to the
11 provisions of 28 U.S.C. § 1441(b).

12 5. Co-Defendant SAFECO INSURANCE COMPANY is not a party to this Notice of
13 Removal as it has not yet been served.

14 6. At the time of the commencement of this action and since that time, Plaintiff SAN
15 DIEGO CENTER FOR CHILDREN ("Plaintiff") is, and has been, a corporation organized and
16 existing under the laws of the State of California doing business and having its principal place of
17 business in the County of San Diego, State of California.

18 7. At the time of the commencement of this action, General was and is a corporation
19 organized and existing under the laws of the State of Washington, with its principal place of
20 business in the City of Seattle, County of King, State of Washington. From May 23, 2003 to May
21 23, 2004, Plaintiff was insured under the following policy of insurance, Professional Healthcare
22 Facility Liability Coverage No. HLP7754265J issued by General to Plaintiff.

23 8. Pursuant to 28 U.S.C. § 1441(a) (as amended), the citizenship of Defendants DOES
24 1 through 5, inclusive, shall be disregarded.

25 9. In Plaintiff's Complaint, at Paragraphs 12-14, Plaintiff is claiming damages for the
26 alleged failure of General to provide Plaintiff a defense under the above-mentioned policy, and for
27 attorney fees and costs incurred to defend Plaintiff in the underlying action.

28

1 WHEREFORE, Defendant General Insurance Company of America, a Washington
2 Corporation, prays that the above-captioned action now pending in the Superior Court of the State
3 of California for the County of San Diego, Case No. 37-2008-0000924-CU-IC-CTL be removed
4 from that Court to this Court.

5 Dated: April 29, 2008

LAW OFFICES OF BRUCE P. AUSTIN

6
7 By: 

8 William P. Harris III, Esq., Attorney for Defendant
9 GENERAL INSURANCE COMPANY OF AMERICA
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CT CORPORATION
A WoltersKluwer Company

**Service of Process
Transmittal**

04/10/2008

CT Log Number 513298290



TO: Corporate Legal, CTSERV@safeco.com
Safeco Corporation
1001 Fourth Avenue, Floor 27
Seattle, WA 98154

RE: Process Served in California

FOR: Safeco Surplus Lines Insurance Company (Domestic State: WA)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	San Diego Center for Children, Pltf. vs. Safeco Insurance Company, et al. including Safeco Surplus Lines Insurance Company, DRs.
DOCUMENT(S) SERVED:	Summons, Complaint, Cover Sheet, Exhibit(s), Notice(s), Stipulation Form
COURT/AGENCY:	San Diego County, Superior Court, CA Case # 37200800080924CUICTL
NATURE OF ACTION:	Insurance Litigation - Seeking a declaration that defense is owed by defendants to SDCC in the Kotake Action
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE:	By Process Server on 04/09/2008 at 14:55
APPEARANCE OR ANSWER DUE:	Within 30 days after service
ATTORNEY(S) / SENDER(S):	Richard P. Edwards Munro Smigliani & Jordan, LLP 2535 Truxtun Road Suite 208 San Diego, CA 92106 619-237-5400
ACTION ITEMS:	CT has retained the current log, Retain Date: 04/10/2008, Expected Purge Date: 04/15/2008 Image SOP - Page(s): 33 Email Notification, Corporate Legal CTSERV@safeco.com
SIGNED:	C T Corporation System
PER:	Nancy Flores
ADDRESS:	818 West Seventh Street Los Angeles, CA 90017
TELEPHONE:	213-337-4615

Page 1 of 1 / VI

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

04/09/08 C2:SS

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**SAFECO INSURANCE COMPANY,
SAFECO SURPLUS LINES INSURANCE COMPANY,
DOES 1 through 5, inclusive**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
SAN DIEGO CENTER FOR CHILDRENFOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)FILED
CIVIL BUSINESS OFFICE 13
CENTRAL DIVISION

2008 APR - 11 P 3:58

S.D. CALIF. COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Diego Superior Court, Central Branch
330 West Broadway
San Diego, CA 92101

CASE NUMBER
(Número del caso) 2008-00080924-CU-IC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Richard P. Edwards, Esq., Munro Smigliani & Jordan, LLP, 2535 Truxtun Road, Suite 208, San Diego,
CA 92106, 619.237.5400, 619.923.2866 (fax), redwards@msjlaw.com

DATE:
(Fecha) APR 01 2008

Clerk, by M. Scott Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Safeco Surplus Lines Insurance Company
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date): 04/09/08

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Print, Sign last number, and attach)
 Richard P. Edwards, Esq., SBN 074358
 Munro Smigliani & Jordan, LLP
 2535 Truxton Road, Suite 208
 San Diego, CA 92106

TELEPHONE NO. 619.237.5400

FAX NO. 619.923.2866

ATTORNEY FOR (Print) Plaintiff San Diego Center for Children

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

STREET ADDRESS 330 West Broadway

MAILING ADDRESS 330 West Broadway

CITY AND ZIP CODE San Diego, CA 92101

BRANCH NAME Central

CASE NAME

San Diego Center for Children v. Safeco Insurance Company, et al.

CIVIL CASE COVER SHEET

☒ Unlimited (Amount demanded exceeds \$75,000) ☐ Limited (Amount demanded is \$75,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER

37-2008-00080924-CU-IC-CTL

JUDGE

CLERK

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (23)
☐ Uninsured motorist (46)

Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PIP/DWD (23)

Non-PIP/DWD (Other) Tort

☐ Business tort/unfair business practice (01)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (10)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PIP/DWD tort (36)

Employment

☐ Wrongful termination (36)
☐ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☒ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re. arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.405-3.408)

☐ Antitrust/Trade regulation (03)
☐ Construction accident (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): one (1)

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 1, 2008

Richard P. Edwards, Esq., SBN 074358

(TYPE OR PRINT NAME)

NOTICE

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto: (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PIP/DAWD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (34)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PIP/DAWD (23)
Promises Liability (e.g., slip and fall)
Intentional Bodily Injury/PI/DAWD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PIP/DAWD

Non-PIP/DAWD (Other) Tort

Business Tort/Unfair Business Practice (37)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (36)
Defamation (e.g., slander, libel) (13)
Fraud (10)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PIP/DAWD Tort (35)
Employment
Wrongful Termination (35)
Other Employment (15)

Contract

Breach of Contract/Warranty (36)
Breach of Rental Lease
Contract (not unlawful dealer or wrongful eviction)
Contract/Warranty Breach—Seller
Plaintiff (not breach or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (38)
Collection Case—Seller/Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other: Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other (Real) Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, tenancy/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (35)
Petition Re: Arbitration Award (11)
Writ of Mandate (32)
Writ—Administrative Mandamus
Writ: Mandamus on Limited Court Case Made
Writ—Other Limited Court Case Review
Other Judicial Review (35)
Review of Decision Officer Order
Notice of Appeal Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (33)
Constitutional District (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Gloria State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Confirmation of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint RICO (27)

Other Complaint (not specified above) (42)
Outstanding Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non tort/non complex)
Other Civil Complaint (non tort/non complex)
Miscellaneous Civil Petition Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Habitual/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Liable Claim
Other Civil Petition

San Francisco, Page 4 of 7

2008-04-01 22:25:23 (GMT)

619.923.2866 From: Richard Edwards

FILED
CIVIL BUSINESS OFFICE 13
CENTRAL DIVISION

2008 APR -1 P 3:59

COURT
SAN DIEGO COUNTY, CA

Richard P. Edwards, Esq., SBN 074358
 MUNRO SMIGLIANI & JORDAN, LLP
 2535 Truxtun Road, Suite 208
 San Diego, California 92106
 Telephone: 619.237.5400
 Facsimile: 619.923.2866

Attorneys for Plaintiff SAN DIEGO
 CENTER FOR CHILDREN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN DIEGO - CENTRAL BRANCH

SAN DIEGO CENTER FOR CHILDREN,) CASE NO. *By Fax* 37-2008-00080924-CU-IC-CTL
)
 Plaintiff,) Action filed: April 1, 2008
)
 v.)
) COMPLAINT FOR DECLARATORY
) RELIEF
 SAFECO INSURANCE COMPANY,)
 SAFECO SURPLUS LINES INSURANCE)
 COMPANY,)
 AND DOES 1 through 5, inclusive,)
)
 Defendants.)

Plaintiff SAN DIEGO CENTER FOR CHILDREN ("SDCC") is informed and believes,
 and thereon alleges, as follows:

PARTIES AND INSURANCE POLICIES

1. SDCC is, and at all times relevant hereto was, a California corporation licensed
 to do business and doing business in the County of San Diego.

2. SDCC is informed and believes, and thereon alleges, that SAFECO
 INSURANCE COMPANY ("SAFECO CO.") is an insurance company duly licensed by the
 State of California to conduct the business of insurance in California, and at all times relevant
 hereto conducted the business of insurance in the County of San Diego.

1 3. SDCC is informed and believes, and thereon alleges, that SAFECO CO. issued a
2 Professional Healthcare Facility Liability Coverage Policy, No. HLP7754265J, effective from
3 May 23, 2003, to May 23, 2004, a true and correct copy of which is attached hereto as Exhibit
4 "A" and incorporated herein by reference.

5 4. SDCC is informed and believes, and thereon alleges, that SAFECO CO. issued
6 an Umbrella/Excess Coverage Policy, No. UL7754265A, effective from May 23, 2003, to May
7 23, 2004, a true and correct copy of which is attached hereto as Exhibit "B" and incorporated
8 herein by reference.

9 5. SDCC is informed and believes, and thereon alleges, that SAFECO SURPLUS
10 LINES INSURANCE COMPANY ("SAFECO SURPLUS") is a surplus lines insurer which at
11 all times herein alleged was conducting the business of insurance in the State of California,
12 including the County of San Diego.

13 6. SDCC is informed and believes, and thereon alleges, that SAFECO SURPLUS
14 issued Directors & Officers Coverage Policy, No. 81669841, effective from September 27,
15 2003, to September 27, 2004, a true and correct copy of which is attached hereto as Exhibit "C"
16 and incorporated herein by reference.

17 7. SDCC is informed and believes, and thereon alleges, that defendants DOES 1
18 through 5 are insurance companies with identities that are currently unknown to SDCC. SDCC
19 is informed and believes, and thereon alleges, that DOES 1 through 5 performed the business of
20 insurance in the State of California and have issued policies to SDCC. The policies issued by
21 DOES 1 through 5 insure SDCC, which has its primary place of business in California, and
22 DOES 1 through 5 have purposefully availed themselves of the protections and benefits of
23 California and have the requisite minimum contacts with California such that the exercise of
24 jurisdiction by this Court does not violate traditional notions of fair play and substantial justice.

25 ///

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GENERAL ALLEGATIONS

8. This action arises out of the failure of the Defendants to fully defend SDCC in an action filed against SDCC in the Circuit Court of the First Circuit of Hawaii. A copy of the Complaint in that action is attached hereto as Exhibit "D" and incorporated herein by reference ("Kotake Action").

9. SDCC has rendered its defense of the Kotake Action to the defendants.

10. Despite their obligation to do so, defendants have refused to defend SDCC in the Kotake Action.

11. In light of defendants' refusal to provide a defense, SDCC is defending itself out of its own funds and has incurred defense fees and costs in connection with its defense of the Kotake Action in an unknown amount in excess of \$25,000, and will continue to incur defense fees and costs in the Kotake Action.

FIRST CAUSE OF ACTION - DECLARATORY RELIEF

(Against All Defendants)

12. SDCC incorporates by reference Paragraphs 1 through 11 above as though fully set forth in this Cause of Action.

13. A right of action for declaratory relief exists upon Defendants' policies providing insurance to SDCC, as those policies are both written instruments and contracts.

14. An actual controversy involving justiciable questions has arisen and now exists between SDCC and Defendants concerning their respective rights and obligations under the policies at issue here as follows:

a) SDCC is informed and believes, and thereon alleges, that defendants owe SDCC a complete defense in the Kotake Action. Defendants disagree with SDCC's position in this regard.

b) Defendants are responsible for the attorneys' fees and costs SDCC has incurred to compel defendants to fully defend SDCC against the allegations in the Kotake Action.

///

1 c) SDCC is entitled to attorneys' fees and costs as special damages, first,
2 because this action and all fees and costs incurred by SDCC in this action were foreseeable
3 damages proximately caused by Defendants' tortious conduct and breach of contract in failing to
4 fully defend SDCC in the Kotake Action, and second, because Defendants' refusal to defend
5 SDCC was in bad faith.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff prays judgment as follows:

- 8 1. For a declaration that defense is owed by Defendants to SDCC in the Kotake
9 Action;
10 2. For attorneys' fees and costs of suit incurred herein; and,
11 3. For such other and further relief as the court may deem just and proper.

12
13 Dated: April 1, 2008.

MUNRO SMIGLIANI & JORDAN, LLP

14
15
16 By: 

17 Richard P. Edwards, Esq.
18 Attorney for Plaintiff SAN DIEGO
19 CENTER FOR CHILDREN
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EXHIBIT "A"

Professional Health Care Facility Liability Coverages

COMPANY	Safeco Insurance Company
POLICY NUMBER	HLP7754265J
POLICY TERM	05/23/03 to 05/23/04

Admitted	• Admitted
Policy Form	• Claims-Made
Prior Acts Date	• Not Applicable
Deductible	• Not Applicable

COVERAGE	LIMIT OF LIABILITY
Each Medical Incident	\$1,000,000
General Aggregate	\$3,000,000

This is a summary only. The precise coverage afforded is subject to the terms, conditions and exclusions of the policies as issued. Barney & Barney makes no representations, either expressed or implied, as to the adequacy of any limits of protection. Determination of the adequacy of the limits of protection is your responsibility.

BARNEY&BARNEY.

**SAFECO**

GENERAL INSURANCE COMPANY OF AMERICA

HOME OFFICE: 4333 BROOKLYN AVE. N.E., SEATTLE, WASHINGTON 98185

- ☐ PROFESSIONAL LIABILITY POLICY DECLARATIONS
☒ HEALTH CARE FACILITY POLICY DECLARATIONS

Named Insured and Mailing Address:

San Diego Center for Children
 Refer to Endorsement for Legal Name
 3002 Armstrong Street
 San Diego, CA 92111

Agent Number: 94-1501

HLP7754265J

Policy Number☒ **Renewal****Business of Named Insured is: Residential Care Home**

Named Insured is: ☐ Individual ☐ Corp ☐ Partnership ☐ Joint Venture ☒ Other non-profit

Policy Period From: 5/23/03 To: 5/23/04**12:01 A.M. Standard Time at the address of the Named Insured.**

COVERAGE	LIMITS OF INSURANCE
PROFESSIONAL LIABILITY — EACH CLAIM LIMIT	\$ 1,000,000
PROFESSIONAL LIABILITY — GENERAL AGGREGATE LIMIT	\$ 3,000,000
<input type="checkbox"/> CLAIMS-MADE — Retroactive Date:	
<input checked="" type="checkbox"/> OCCURRENCE	
DEDUCTIBLE — EACH CLAIM: \$	
DEDUCTIBLE — ANNUAL AGGREGATE: \$	

Forms Attached: IL 00 17 11/98
 SM 60 39 12/97
 SM 60 40 12/97
 SM 60 54 2/01
 SR 21 02 1/03
 SR 21 03 1/03
 SR 72 69 3/95

As an insured, you are to properly and lawfully conduct business in California. You are required to participate in the California Insurance Education Association (CIEA) program to obtain the CIGA or CIP (California Insurance) and other education for your business.

Each insured must have a minimum of 12 hours of education. If you are not a CIEA member, you must have 12 hours of education. If you are a CIEA member, you must have 6 hours of education. If you are a CIEA member, you must have 6 hours of education.

This form is provided for your information only. It is not a contract. The actual policy is the contract.

Premium: \$ 36,853.00
CIGA Fee \$ 737.06
Total Premium Due \$ 37,590.06

AUTHORIZED REPRESENTATIVE

SM 60 54/EF 2/01

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 DOC

EXHIBIT "B"

Umbrella/Excess Coverages

COMPANY	Safeco Insurance Company
POLICY NUMBER	UL7754265A
POLICY TERM	05/23/03 - 05/23/04

LIMIT	RETENTION	SUBJECT TO AUDIT?
\$4,000,000	\$10,000	No

Limitations or Exclusions:

All liability policies contain exclusions or limitations. In addition to the typical exclusions customarily found in policies of this type, the coverage also will contain, but not be limited to, the following exclusions, limitations or conditions:

Exclusions:

- Employment Related Practices
- Pollution
- Real and Personal Property in your Care, Custody and Control
- Asbestos
- Athletic Participants

Specific Terms and Conditions:

- Following Form: Sexual Misconduct, Professional, Employers Liability
- 25% of premium is minimum earned
- No flat cancellations allowed

Underlying Coverages:

COVERAGE	LIMIT
General Liability	
- Aggregate	\$3,000,000
- Per Occurrence	\$1,000,000
- Products/Completed Liability	\$3,000,000
- Personal/Advertising Injury Liability	\$1,000,000
Employers Liability	\$1,000,000
Miscellaneous Professional Liability	\$1,000,000
Automobile Liability	\$1,000,000

This is a summary only. The precise coverage afforded is subject to the terms, conditions and exclusions of the policies as issued. Barney & Barney makes no representations, either expressed or implied, as to the adequacy of any limits of protection. Determination of the adequacy of the limits of protection is your responsibility.

BARNEY & BARNEY

**SAFECO**

SAFECO INSURANCE COMPANY OF AMERICA
HOME OFFICE: 4333 BROOKLYN AVE. N.E., SEATTLE, WASHINGTON 98185
(A stock insurance company herein called the company)

Commercial Liability Catastrophe Coverage Renewal Certificate

Keep this renewal certificate with
the policy. It is evidence your
insurance is in force.

Attach to Your Policy No.

UL7754265A

Refer to above policy number on all
correspondence or Claims involving
this Renewal Certificate.

Upon receipt of the premium, this certificate renews your policy. Coverage is provided by your policy as updated below.

1. NAMED INSURED AND MAILING ADDRESS

(Number, Street, Town, County, State, ZIP)

CPP ACCOUNT NO.

SAN DIEGO CENTER FOR CHILDREN
REFER TO ENDORSEMENT FOR LEGAL NAME
3002 ARMSTRONG STREET
SAN DIEGO, CA 92111

2. POLICY PERIOD: From May 23 2003 To May 23 2004

12:01 A.M. Standard Time at your mailing address shown above.

3. LIMITS OF INSURANCE

General Aggregate Limit (other than products - completed operations and auto)	\$ 4,000,000
Products - Completed Operations Aggregate Limit	\$ 4,000,000
Each Occurrence Limit	\$ 4,000,000
Self Insured Retention	\$ 10,000

4. PREMIUMAdvance Premium \$35,700. (\$35,000 PRBM. + \$700 C.I.G.A.) (TRIA - \$0) ☒ Flat

Premium Adjustable at rate of \$ _____ per \$ _____ of _____

Minimum Earned Premium \$ _____ Annual Minimum Premium \$ _____

5. SCHEDULE OF UNDERLYING INSURANCE: (Insurer, policy number, period, coverage, limits of insurance)

FIRST NATIONAL INSURANCE COMPANY OF AMERICA CP 7754265J 05-23-03 TO 05-23-04

General Liability

General Aggregate Limit (other than products - completed operations)	\$ 3,000,000
Products - Completed Operations Aggregate Limit	\$ 3,000,000
Personal & Advertising Injury Limit	\$ 1,000,000
Each Occurrence Limit	\$ 1,000,000

☐ Including Non-Owned Auto ☐ Including Hired Auto ☐ Including Stop Gap
☐ Including CG 25 04 Per Location - Aggregate ☐ Including CG 25 03 Per Project - Aggregate

FIRST NATIONAL INSURANCE COMPANY OF AMERICA BA 7754265J 05-23-03 TO 05-23-04

Auto Liability

Each Accident	\$ 1,000,000
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Employer's Liability

Bodily Injury by Accident, Each Accident	\$ _____
Bodily Injury by Disease, Policy Limit	\$ _____
Bodily Injury by Disease, Each Employee	\$ _____

6. FORMS: ALL FORMS REMAIN IN EFFECT EXCEPT AS NOTED BELOW.

Added: CU2167(3-02), CU2181(11-02), C4112(1-03),
CU7008(4-89), IL8500 (12-97) - NAMED INSURED
ENDORSEMENT, IL8500 (12-97) CALIFORNIA C.I.G.A.

Deleted:

Authorized Representative

Date

CU 73 02/EF 9/08

ORIGINAL

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EXHIBIT "C"

Directors & Officers Coverage

COMPANY	Safeco Surplus Lines Insurance Co.
POLICY NUMBER	81669841
POLICY TERM	09/27/03 - 09/27/04

Prior Acts Date:

None

Deductible:

Each Claim	\$25,000
Employment Practices Liability	\$50,000

Policy Form:

Claims Made

COVERAGE	LIMIT OF LIABILITY
Limit of Liability - Aggregate	\$5,000,000

This is a summary only. The precise coverage afforded is subject to the terms, conditions and exclusions of the policies as issued. Barney & Barney makes no representations, either expressed or implied, as to the adequacy of any limits of protection. Determination of the adequacy of the limits of protection is your responsibility.

BARNEY & BARNEY

Executive Risk Indemnity Inc.

Home Office
32 Lonsborough Square, Suite 1100
Darien, Connecticut 06810

Administrative Offices/Mailing Address:

82 Hopmeadow Street
Simsbury, Connecticut 06070-7683

**NOT-FOR-PROFIT ORGANIZATION
DIRECTORS, OFFICERS AND TRUSTEES LIABILITY INSURANCE POLICY
INCLUDING EMPLOYMENT PRACTICES LIABILITY COVERAGE**

DECLARATIONS

POLICY NUMBER
8166-9841

NOTICE: THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR, IF PURCHASED, THE DISCOVERY PERIOD. THE COVERAGE AFFORDED UNDER THIS POLICY DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE POLICY CAREFULLY.

ITEM 1. PARENT ORGANIZATION - NAME AND PRINCIPAL ADDRESS San Diego Center for Children 3002 Armstrong Street San Diego, CA 92111 State of Incorporation or Organization: CA	ITEM 2. POLICY PERIOD: (a) Inception Date: September 27, 2003 (b) Expiration Date: September 27, 2004 at 12:01 a.m. both dates at the Principal Address in ITEM 1.
ITEM 3. LIMIT OF LIABILITY: \$5,000,000.00 maximum aggregate limit of liability for all Claims made or deemed made during any Policy Year	
ITEM 4. PREMIUM: \$ 34,870.00 total premium. Surcharge: \$697.40	
ITEM 5. RETENTIONS: (a) \$0.00 each Insured Person each Claim, but only for Loss as to which Indemnification by the Insured Entity is not legally permissible or is not made solely by reason of the Insured Entity's financial insolvency. (b) \$25,000.00 each Claim, for Loss as to which Indemnification by the Insured Entity is legally permissible (c) \$25,000.00 each Claim under Insuring Agreement C	
ITEM 6. ADDITIONAL PREMIUM FOR EXTENDED REPORTING PERIOD: 40% of annual expiring premium, for one (1) year Extended Reporting Period 75% of annual expiring premium, for two (2) year Extended Reporting Period	
ITEM 7. NOTICE UNDER CONDITIONS (G)(1) AND (G)(2) MUST BE ADDRESSED TO: Vice President of Claims Executive Risk Management Associates P. O. Box 2002 Simsbury, CT 06070	
ITEM 8. ENDORSEMENTS ATTACHED AT ISSUANCE: C31384 (12/99 ed.) D24770 (7/97 ed.) D21190 (11/94 ed.) D22175 (8/95 ed.) D23832 (1/97 ed.) D23833 (3/98 ed.) D23861 (9/01 ed.)	

These Declarations, the signed and completed Application and the Policy, with endorsements, will constitute the entire agreement between the Underwriter, the Insured Entity and the Insured Persons.

EXECUTIVE RISK INDEMNITY INC. by (Authorized Company Representative):

Robert Handberg

EXHIBIT "D"

Of Counsel:
ALSTON HUNT FLOYD & ING
Attorneys At Law
A Law Corporation

SHELBY ANNE FLOYD 1724-0
THOMAS E. BUSH 4737-0
18th Floor, ASB Tower
1001 Bishop Street
Honolulu, Hawaii 96813
Telephone: (808) 524-1800

Attorneys for Plaintiff

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2006 NOV 13 PM 4:02

H. CHING
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVINA KOTAKE, as Permanent
Custodian of John Doe, A Minor,

Plaintiff,

vs.

HAWAII CENTER FOR CHILDREN;
JOHN DOES 2-20; DOE
CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10 and DOE
ENTITIES 1-10,

Defendants.

CIVIL NO. 06-1-1962-11 B I A
(Non-motor vehicle tort)

COMPLAINT; SUMMONS

COMPLAINT

Comes now Plaintiff DAVINA KOTAKE, as Permanent Custodian
JOHN DOE, a minor, by and through his attorneys Alston Hunt Floyd & Ing
and for his Complaint against Defendants above-named, alleges and avers as
follows:

630104-1 / 7170 -4

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.

[Signature]
Clerk, Circuit Court, First Circuit

I. PARTIES

1. Plaintiff DAVINA KOTAKE ("Kotake"), who is the permanent custodian John Doe, a minor, is a resident of the County of Hawaii, State of Hawaii.

2. JOHN DOE, whose identity is known to named Defendants and who desires to keep his identity confidential for purposes of this action due to his minority, at all times material herein, resided in the City and County of Honolulu, State of Hawaii.

3. Defendant HAWAII CENTER FOR CHILDREN ("HCC") is and was at all times material herein, a Hawaii Corporation, doing business in the City and County of Honolulu, State of Hawaii.

4. Plaintiff has obtained some information from certain records of the Department of Education and Department of Health of the State of Hawaii and other records, in order to ascertain the true and full identities of all defendants in this action, but has no further knowledge or information regarding the parties responsible and is unable to ascertain the identity of the defendants in this action designated as Defendants JOHN DOES 2-20, DOE CORPORATIONS 1-10, DOE PARTNERSHIPS 1-10 and DOE ENTITIES 1-10 (hereinafter collectively referred to as "Doe Defendants"). The Doe Defendants' true names and identities are unknown to Plaintiff except that they are connected in some manner with Defendants and may be agents, servants, employees, employers, representatives, co-venturers, associates, or

independent contractors of Defendants and/or were in some manner presently unknown to Plaintiff engaged in the activities alleged herein and/or were in some manner responsible for the injuries or damages to Plaintiff and their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff or Plaintiff's attorneys. Plaintiff prays for leave to amend this Complaint to insert herein their true names, identities, capacities, activities and/or responsibilities when they are ascertained.

II. JURISDICTION

5. All events material herein occurred within the City and County of Honolulu and within the jurisdiction of the Circuit Court of the First Circuit, State of Hawaii. The amount at issue is within the jurisdictional limits of said Circuit Court of the First Circuit.

III. UNDERLYING FACTS

6. Kotake is the biological aunt of John Doe and was his foster parent from 2000 until January 2004.

7. By January 2004, John Doe was 12 years old, and had been diagnosed with multiple psychological, mental and emotional disabilities. The rights of his parents had been permanently terminated and he was a ward of the State of Hawaii.

8. In 2003 and 2004, HCC purported to provide and operate an interdisciplinary psychotherapeutic treatment program in a twenty-four hour a day facility ("treatment program") on the Island of Oahu, in the City and

County of Honolulu, for severely emotionally disturbed male youth pursuant to a contract with the State of Hawaii Department of Health, Child & Adolescent Mental Health Division ("CAMHD"). HCC touted its treatment program as being safe and designed for troubled teens with substance abuse problems.

9. In December 2003, the State of Hawaii, without any input from Kotake, contacted HCC to determine whether HCC would accept John Doe for entrance into its treatment program.

10. HCC thereafter interviewed John Doe and accepted him for entrance in January 2004 into its treatment program.

11. HCC accepted John Doe for placement into its treatment program despite that fact that he was neither a teenager nor had substance abuse issues.

12. In admitting John Doe into its treatment program, HCC put together a treatment plan that specifically identified as "Barriers to Success," the fact that John Doe was vulnerable to sexual exploitation and that he needed one to one monitoring and line of sight supervision to remain safe. HCC's treatment plan also recognized that John Doe engaged in "negative attention-seeking behaviors."

13. HCC sets forth goals in the treatment plan that included ensuring that John Doe (a) "be able to identify and maintain appropriate sexual boundaries 100% of the time and verbalize a personal safety plan if feeling sexually threatened" and (b) learn "how to resolve conflicts with peers with staff

guidance and support 90% of the time."

14. Upon John Doe's entrance into the program, HCC completely failed to provide him with the support and guidance it knew was necessary to avoid the barriers to success it had identified and to achieve the goals in its treatment plan.

15. HCC housed John Doe with an older boy who it knew had a history of sexual predation and then failed to provide the one to one monitoring that it had recognized John Doe needed.

16. Within two to three weeks after John Doe had entered the treatment program, HCC staff and outside professionals working with HCC recognized and informed HCC that John Doe was not appropriate for this program, and that HCC lacked the resources to provide the one to one monitoring that John Doe needed to be safe.

17. As a result of HCC's failure to provide a safe environment for John Doe, he was sexually assaulted repeatedly by his roommate within weeks of his entrance to the program and became a target at the program for negative comments and bullying by other older and bigger program residents.

18. HCC learned of the sexual assaults approximately three weeks after they began, but even then HCC failed to take reasonable steps to assure John Doe's safety and well-being for over two months.

19. As a result of HCC's failure to act, John Doe remained in the program and in continued contact with the sexual perpetrator. He also

remained the target for negative comments and bullying by other program residents.

20. HCC failed to promptly act to ensure John Doe's safety and welfare despite the repeated requests of HCC staff and professionals working with HCC who informed it was dangerous for John Doe to remain in the program and that he must be moved as soon as possible.

21. Finally, on or about May 11, 2004, HCC discharged John Doe from its program, and he was transferred to a residential treatment program on the Island of Hawaii that specializes in treating emotionally disturbed children.

22. As a direct result of HCC's failure to protect John Doe, he has suffered severe physical injury and has suffered and continues to suffer psychological injury, which has manifested itself in his behavior and will likely continue to manifest itself as he becomes an adult.

IV. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

[Negligence - Inappropriate Admission/Failure to Protect]

23. Plaintiff incorporates by reference and realleges the preceding paragraphs as though fully set forth above.

24. HCC voluntarily undertook John Doe's custody and care. HCC thus had a "special relationship" with John Doe that was a quasi-parental or *in loco parentis* custodial relationship.

25. HCC had a duty of care to John Doe that required, among

other things, that it take reasonable steps to prevent any harm to John Doe which it foresaw or reasonably should have foreseen.

26. HCC breached this duty of care to John Doe by admitting him into its program even though he was inappropriate for admission based on its own criteria. HCC further breached this duty of care to John Doe by failing to take reasonable steps to ensure his safety and welfare once it decided to admit him into its program.

27. As a result of HCC's breach of its duty of care, John Doe was sexually assaulted by his roommate and was the target for negative comments and bullying by other program residents.

28. As a direct and proximate result of the negligence of HCC, John Doe has suffered extreme physical and emotional pain and suffering, past and future medical expenses, permanent emotional distress and psychological damages and other damages in an amount to be proven at trial. In addition, HCC's conduct was reckless, grossly negligent and/or done with deliberate indifference to the rights of John Doe, and thus HCC shall be liable for punitive damages.

SECOND CLAIM FOR RELIEF
[Negligence - Failure to Intervene/Protect]

29. Plaintiff incorporates by reference and realleges the preceding paragraphs as though fully set forth above.

30. After learning that John Doe had been sexually assaulted and that he was the target for negative comments and bullying, HCC, which

continued to have a "special relationship" with him, owed him a duty of care to promptly intervene in the situation it had placed him in and to protect him from further harm.

31. HCC breached a duty of care to John Doe by failing to promptly intervene in the situation it had placed him in and by allowing him to continue to be the target for negative comments and bullying and to have contact with the sexual abuse perpetrator.

32. As a direct and proximate result of the negligence of HCC, John Doe has suffered extreme physical and emotional pain and suffering, past and future medical expenses, permanent emotional distress and psychological damages and other damages in an amount to be proven at trial. In addition, HCC's conduct was reckless, grossly negligent and/or done with deliberate indifference to the rights of John Doe, and thus HCC shall be liable for punitive damages.

THIRD CLAIM FOR RELIEF
[Breach of Contract]

33. Plaintiff incorporates by reference and realleges the preceding paragraphs as though fully set forth above.

34. John Doe was a third party beneficiary of HCC's contract with CAMHD to provide an appropriate and safe treatment program.

35. HCC failed to provide John Doe with an appropriate and safe treatment program and therefore breached its contract with CAMHD and its duty to John Doe.

36. As a direct and proximate result of the breach of contract by HCC, John Doe has suffered extreme physical and emotional pain and suffering, past and future medical expenses, permanent emotional distress and psychological damages and other damages in an amount to be proven at trial.

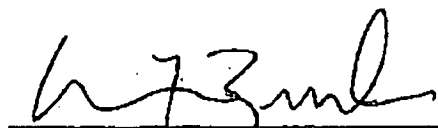
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that the court enter judgment against Defendants Hawaii Center for Children and John Does 2-20, Doc Corporations 1-10, Doe Partnerships 1-10 and Doe Entities 1-10 on all causes of action and grant relief as follows:

- a. For general and special damages in amounts to be proven at trial;
- b. For punitive damages in amounts to be proven at trial;
- c. For attorneys' fees, costs of suit and both pre-judgment and post-judgment interest to the extent allowed by law; and
- d. For such other and further relief as the Court deems just and proper under the circumstances.

NOV 13 2006

Dated: Honolulu, Hawaii, _____



SHELBY ANNE FLOYD
THOMAS E. BUSH
Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DAVINA KOTAKE, as Permanent
Custodian of John Doe, A Minor,

Plaintiff,

vs.

HAWAII CENTER FOR CHILDREN;
JOHN DOES 2-20; DOE
CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10 and DOE
ENTITIES 1-10,

Defendants.

CIVIL NO. _____
(Non-motor vehicle tort)

SUMMONS

SUMMONS

STATE OF HAWAII

To the above-named Defendants:

You are hereby summoned and required to serve upon ALSTON HUNT FLOYD & ING whose address is 18th Floor, American Savings Bank Tower, 1001 Bishop Street, Honolulu, Hawaii 96813, attorneys for Plaintiff, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

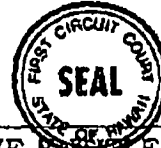
This Summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge

of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, NOV 13 2006

H. CHING



CLERK OF THE ABOVE-ENTITLED COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6145	
PLAINTIFF(S) / PETITIONER(S): San Diego Center for Children	
DEFENDANT(S) / RESPONDENT(S): Safeco Insurance Company et.al.	
SAN DIEGO CENTER FOR CHILDREN VS. SAFECO INSURANCE COMPANY	
NOTICE OF CASE ASSIGNMENT	CASE NUMBER: 37-2008-00080924-CU-IC-CTL

Judge: Jay M. Bloom

Department: C-70

COMPLAINT/PETITION FILED: 04/01/2008

CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

COMPLAINTS: Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

DEFAULT: If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2008-00080924-CU-IC-CTL

CASE TITLE: San Diego Center for Children vs. Safeco Insurance Compar

NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

ADR POLICY

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR – i.e. the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

ADR OPTIONS

1) CIVIL MEDIATION PROGRAM: The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants, and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

Assignment to Mediation, Cost and Timelines: Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation: \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

2) JUDICIAL ARBITRATION: Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

Assignment to Arbitration, Cost and Timelines: Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

3) SETTLEMENT CONFERENCES: The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

4) OTHER VOLUNTARY ADR: Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

ADDITIONAL ADR INFORMATION: For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	FOR COURT USE ONLY
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
PLAINTIFF(S): San Diego Center for Children	
DEFENDANT(S): Safeco Insurance Company et.al.	
SHORT TITLE: SAN DIEGO CENTER FOR CHILDREN VS. SAFECO INSURANCE COMPANY	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)	CASE NUMBER: 37-2008-00080924-CU-IC-CTL

Judge: Jay M. Bloom

Department: C-70

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- | | |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration |
| <input type="checkbox"/> Private Neutral Evaluation | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial | <input type="checkbox"/> Private Reference to General Referee |
| <input type="checkbox"/> Private Summary Jury Trial | <input type="checkbox"/> Private Reference to Judge |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration |
| <input type="checkbox"/> Other (specify): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate: (mediation & arbitration only) _____

Date: _____

Date: _____

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

IT IS SO ORDERED.

Dated: 04/01/2008

JUDGE OF THE SUPERIOR COURT

UNITED STATES DISTRICT COURT – SOUTHERN DIVISION		FOR COURT USE ONLY
TITLE OF CASE: SAN DIEGO CENTER FOR CHILDREN v. SAFECO INS. CO., et al.		
William P. Harris III (123575) LAW OFFICES OF BRUCE P. AUSTN 1455 Frazee Road, Suite 802 San Diego, CA 92108 Tel: (619) 209-4000 Fax: (866) 724-0742		
ATTORNEY(S) FOR: Defendant GENERAL INSURANCE COMPANY OF AMERICA	HEARING DATE: TIME: DEPARTMENT:	CASE NO: JUDGE ASSIGNED:

I, Teri A. Moore, declare that: I am over the age of eighteen years, not a party to the action, and employed in the office of a member of the Bar of this Court at whose direction the service was made in the County of San Diego, California, where the mailing occurs. My business address is 1455 Frazee Road, Suite 802, San Diego, California.

On April 29, 2008, I served the following:


NOTICE OF REMOVAL TO UNITED STATES DISTRICT COURT

(x) BY MAIL. I declare that I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service, and that a true copy of the correspondence was placed in a separate envelope addressed to each addressee named in the attached service list, and that each envelope was then sealed and deposited with the United States Postal Service in San Diego this same day in the ordinary course of business.

Richard P. Edwards, Esq. MUNRO SMIGLIANI & JORDAN LLP 2535 Truxtun Road, Suite 208 San Diego, CA 92106 Tel: (619) 237-5400 Fax: (619) 923-2866	Plaintiff
---	-----------

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 29, 2008


Teri A. Moore

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

150347 - MB

April 29, 2008
16:32:34

Civ Fil Non-Pris

USAO #: 08CV0782 CIVIL FILING
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#: BC0492741

Total -> \$350.00

FROM: SAN DIEGO CENTER FOR CHILDREN
VS SAFECO INSURANCE CO

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SAN DIEGO CENTER FOR CHILDREN

(b) County of Residence of First Listed Plaintiff San Diego, California
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Richard P. Edwards, Esq., Munro Smigliani & Jordan LLP
225 Truxtun Rd, Suite 208, San Diego, CA 92106 619/237-5400

DEFENDANTS ~~SAFECO INSURANCE COMPANY,~~
~~SAFECO SURPLUS LINES INSURANCE~~
~~CAMPANY, and DOE~~ 887th 29th St, inclusive
King, Washington 98148

County of Residence of First Listed Defendant King, Washington 98148

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, SET THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) William P. Harris III, Esq. (Bar No. 123575)
Law Offices of Bruce P. D'Aquila
1455 Frazee Road, Suite 402
San Diego, CA 92108/TEL (619) 209-4000
Fax (619) 241-0742

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause:
Declaratory Relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
Declaratory Relief

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/29/2008

SIGNATURE OF ATTORNEY OF RECORD

William P. Harris III for Defendant

FOR OFFICE USE ONLY

RECEIPT #

150847

AMOUNT

\$350-

APPLYING IFP

JUDGE

MAG. JUDGE

04/29/08 MB